IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4866 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

JAGMOHAN CHOTALAL PARMAR - Applicant(s)
Versus
BISHAMBARNATH LEKHRAJ & 1 - Respondent(s)

==========

Appearance :
MR RR MARSHALL for Applicant(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2007

ORAL JUDGMENT

1. By way of this application under Section 482 of the Criminal Procedure Code ('***Cr.P.C.***' for short), the petitioner – original accused has prayed for an

appropriate order for quashing and setting aside the complaint being Private Criminal Case No. 410 / 1999 pending before the Court of learned Judicial Magistrate First Class,(J.M.F.C.), Surat.

2. A criminal complaint has been filed against the petitioner by respondent No.2-herein in the Court of the learned J.M.F.C., Surat being Criminal Case No.410 /1999 for the offence punishable under Section 138 of the Negotiable Instruments Act ('***N.I.Act***' for short) for dishonour of cheque in question issued by the petitioner. On the said complaint, the learned Magistrate has issued summons and therefore, the petitioner has preferred the present application under Section 482 of the Cr.P.C. It is the case on behalf of the petitioner that the petitioner has not committed any offence as alleged under Section 138 of the N.I.Act and cheques in question were forcibly taken by the Manager of Bank of Baroda, Sagarampura Branch and; that there was no legal debt. It is submitted that the complainant has failed to show that there was any criminal intention and; that amount was due and payable to him. Under the circumstances, it is requested to quash the impugned

complaint as continuous of same would be abuse of process of law.

3. Respondent No.2- Party-in-Person is personally present in the Court and has submitted that on bare reading of the complaint a case is made out against the petitioner under Section 138 of the N.I.Act and that all the ingredients for the offence under Section 138 of the N.I.Act are satisfied and whatever submitted by the petitioner in the present petition is his defence which is required to be considered at time of trial on leading proper evidence. He has also submitted that there is statutory presumption with regard to legal due as provided under Section 139 of the N.I.Act. However same is rebutted which can be considered only on leading proper evidence. Therefore, it is requested to dismiss the present petition.

4. Learned APP has requested to dismiss the present application as on bare reading of the complaint all the ingredients of Section 138 of the N.I.Act are satisfied and *prima-facie* case is made out against the petitioner for the offence punishable

under Section 138 of the N.I.Act.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is not in dispute that the cheques signed by the petitioner has been deposited by respondent No.2 – original complainant which is dishonored an/or returned with an endorsement 'Payment stop by Drawer'. On bare reading of the complaint it *prima-faice* discloses offence under Section 138 of the N.I.Act and all the ingredients of Section 138 are satisfied. Whatever submitted on behalf of the petitioner is his defence; such as there was no legal due and/or cheques was taken forcibly, same are not required to be considered at this stage. All such defences are required to be considered at the stage of trial on leading proper evidence.

7. Under the circumstances, no case is made out to quash the impugned complaint in exercise of powers under Section 482 of the Cr.P.C. There is no substance in the present application, requires to be

dismissed and accordingly it is dismissed. Notice discharged.

[M.R.Shah, J.]

satish